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UNCLAS SECTION 01 OF 05 SANTIAGO 000166

SENSITIVE  
SIPDIS  
SIPDIS  
DRL/ILSCR FOR MARK MITTELHAUSER  
DOL FOR ILAB TIMOTHY WEDDING  
COMMERCE FOR KENGLOM  
STATE PLEASE PASS TO USTR FOR CARLOS ROMERO AND KATE KALUTKIEWICZ

E.O. 12958: N/A  
TAGS: [ELAB](#) [ETRD](#) [PGOV](#) [CI](#)  
SUBJECT: CHILE: Labor Monitoring and Engagement with FTA Countries

REF: A) 09 STATE 129631; B) 09 PARIS 1732; C) SANTIAGO 98

11. (SBU) Summary: Chile has a developed and steadily growing economy and a stable government which generally protects most worker rights adequately. Areas of concern include low levels of female and youth participation in the workforce, lack of regulation in the informal economy, an inflexible labor market, and some limitations on workers' ability to bargain collectively. More severe forms of labor abuses--such as forced labor and child labor--occur but are not widespread. Chile's president-elect, Sebastian Pinera, has pledged to create one million new jobs, and so may focus substantial attention on labor reform and economic stimulus. Chilean labor officials are eager for expert-level technical cooperation with the U.S. Post efforts to facilitate this cooperation have been severely hampered by lack of funding, so Post suggests that cooperation activities focus on offering technical assistance via in-person expert-level exchange of best practices. End Summary.

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SCENESETTER  
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12. (SBU) Chile is on the cusp of developed nation status and basic worker rights are generally enforced. Nonetheless, there are areas where substantial improvement is desirable and possible. Women's participation in the workforce, although increasing, is still one of the lowest in the region. Unemployment in the final quarter of 2009 stood at 8.6 percent, with 41 percent of Chilean women participating in the work force. The Government of Chile generally respects and enforces the rights of workers, although weak enforcement of labor laws is one area of worker rights concern. Others include the relatively high number of workers hired without formal contracts (OECD Economic Survey of Chile 2009), and limitations on workers' ability to bargain collectively (International Trade Union Confederation's Report for the WTO General Council Review of the Trade Policies of Chile, October 2009). In addition, the lack of labor flexibility, including cumbersome and expensive procedures for terminating employment and few part-time and telecommuting options, is a stumbling block to economic growth and broader workplace participation.

Major Changes in 2010: New President and OECD Accession

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13. (U) Two key developments in the first quarter of 2010 will play a major role in shaping Chile's labor market and practices: the inauguration of Chile's first conservative president in twenty years, and Chile's accession to the OECD. On March 11, Sebastian Pinera of the center-right Coalition for Change will assume the presidency, ushering in the first conservative government since the Pinochet dictatorship. While most analysts expect a great degree of policy continuity, labor reforms are one area Pinera may address sooner rather than later. Creating a million new jobs during his four-year term is one of Pinera's primary campaign pledges, so his government may move quickly to create changes that would generate more flexibility and dynamism in the labor market. A second major development occurred on January 11, when Chile signed an accession agreement with the Organization for Economic Cooperation Development (OECD), paving the way for formal membership sometime in the first quarter of 2010. Chile had to undergo a rigorous review of its public policies, including labor policies, during the accession process (Ref B). Chile is the first South American country to obtain membership in the OECD.

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14. (SBU) Pinera's labor advisor (and potential future Labor Minister) Fernando Coloma, told Pol Specialist on January 6 (prior to Pinera's election to office) that the Pinera administration's main labor priorities will revolve around generating employment, with a special focus on women and youth (18 - 29 years old), and improving Chile's human capital through the creation or reform of training programs. In addition, one area a Pinera Administration would look to change is Chile's mandatory severance pay regulations. Coloma said that the campaign program envisions reducing severance pay and increasing payments into the unemployment insurance system. The OECD Economy Study of Chile 2010, released on January 27, makes a similar recommendation.

Recent Reforms: Labor Justice and Regulating Outsourced Work  
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15. (U) In October 2009, the Directorate of Labor (within the Ministry of Labor) concluded a wide-ranging national labor reform program, "New Labor Justice," begun in March 2008. The new system of labor courts allows for oral presentation of arguments (not previously allowed) as well as free legal defense for plaintiffs and the implementation of collections courts to resolve wage disputes. Major components of the reform include an increase in the number of courts and the implementation of new labor code procedures to address specific grievances, ranging from workplace discrimination to small claims. According to the Labor Directorate, prior to the reform, there were not adequate legal structures to effectively and swiftly protect the fundamental labor rights of workers in Chile. The new labor court system is designed to reduce wait times by increasing the number of courts and providing specialized training to judges on labor law.

16. (U) A new law regulating the use of temporary and outsourced labor took effect in January 2007. Under the law, firms can outsource part of their work--meaning that another firm takes full responsibility for a task or process, carrying it out with their own employees--but are prohibited from outsourcing their main economic activity. The law also allows firms to hire contract-based employees outside the regular system of labor protection, but limits this to "temporary" labor, defined as those employed for periods of up to 90 days (or 180 days in some cases) for the duration of an "emergency." In addition, only firms that

register as suppliers of temporary labor and set up guarantees against their obligations to their own workers are allowed to fulfill this function. The law also limits the number of staff that can be used on short-term jobs. In Chile, more than 50% of companies are estimated to subcontract part of their production, while 20.7% subcontracted their main economic activity. Prior to the law, a full 35% of Chile's labor force was estimated not to have a direct contractual link with the main company (Ref C).

#### Status of Key Labor Rights

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17. (U) FREEDOM OF ASSOCIATION: Workers have the right to form and join unions without prior authorization. Approximately 13 percent of the workforce is unionized. Multiple unions exist in many companies, and management can negotiate collective agreements with any of the unions or with ad hoc groups of workers. Unions can form confederations or nationwide labor umbrella organizations and can affiliate with international labor federations. The law allows unions to conduct their activities without interference (see Chile Human Rights Report 2009 [HRR] and Ref C).

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18. (U) While employees in the private sector have the right to strike, the government regulates this right and some restrictions are imposed. Employers must show cause and pay severance benefits if they dismiss striking workers. The law proscribes employees of 32 private sector companies, largely providers of services such as water and electricity, from striking. Strikes by agricultural workers during the harvest season are also prohibited. The law stipulates compulsory arbitration to resolve disputes in the aforementioned industries. Public employees do not enjoy the right to strike, but some do so anyway, including public school teachers in 2009 and civil servants in 2008 (Ref C; HRR09).

19. (U) COLLECTIVE BARGAINING is protected by law, but the right of some workers to bargain collectively is limited. While protected by law, the right of entertainers and temporary agricultural, construction, and port workers to bargain collectively is limited. Contracts are normally negotiated at the company level; multi-company bargaining is permitted on a voluntary basis (Ref C, HRR09).

110. (U) FORCED LABOR/CHILD LABOR: The law prohibits compulsory or forced labor; however, such practices occur on a limited basis, primarily for domestic servitude and forced prostitution. While child labor is an issue in Chile, it is not widespread and typically occurs in the informal economy. Chilean law allows children to perform light work that does not require hard physical labor or constitute a threat to health and childhood development, if their parents/guardians give permission (HRR09). Children in urban areas work as grocery baggers, domestic servants, waiters, parking attendants and assist in construction activities. Children in rural areas are involved in farm work, fishing, and forestry. Children are subject to commercial sexual exploitation and are used in the production, sale and transport of illicit drugs (Chile Worst Forms of Child Labor Report [WFCL] 2008).

111. (U) The GOC has a national child labor action plan that focuses on raising awareness; collecting data; promoting legislative reform in compliance with ILO conventions; developing social and educational programs; and conducting monitoring and evaluation. The government implemented public education programs to raise awareness and worked with the International Labor Organization to operate rehabilitation programs. The Ministry of

Labor convened regular meetings of a business-labor-government group to monitor progress in eradicating child labor. In June 2009, the Ministry of Labor signed an agreement with one of the major business associations, the Confederation of Production and Commerce (CPC), to help eradicate child labor in Chile by raising awareness among companies, their suppliers, and subcontractors (Ref C; WFCL 2008).

¶12. (U) GENDER DISCRIMINATION IN EMPLOYMENT: The labor code provides specific benefits for pregnant workers and recent mothers, including a prohibition against dismissal. Layoffs are not permitted between conception and one year after a female employee has returned from maternity leave. However, some women feel that the protections have the adverse effect of discouraging employers from hiring women of child-bearing age. On December 19, a new law guaranteeing equal pay for equal work went into effect. The law requires companies with 10 or more workers to establish a formal internal complaint procedure, while those with 200 or more workers must also generate a registry detailing employee positions and functions (Ref C; HRR09).

¶13. (U) ACCEPTABLE CONDITIONS OF WORK: The minimum wage is set by law and is subject to adjustment annually. The current monthly minimum wage (approximately USD 288 using the 2009 average exchange rate) was designed to serve as the starting wage for an unskilled single adult worker entering the labor force and does not provide a worker and family with a decent standard of living. In addition to the minimum wage, working hours, overtime, paid annual vacations,

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and holidays are all established by law. The law protects the continued employment of workers who remove themselves from dangerous situations if labor inspectors from the Labor Directorate and occupational safety and health inspectors from the country's Safety Association determine that dangerous conditions exist (Ref C; HRR09).

¶14. (U) The law sets the legal work week at six days or 45 hours. The maximum work day length is 10 hours (including two hours of overtime pay), but positions such as caretakers and domestic servants are exempt. The law mandates at least one 24 hour rest period during the work week, except for workers at high altitudes, who may exchange a rest day each week for several consecutive rest days every two weeks. The law establishes fines for employers who compel workers to work in excess of 10 hours a day or do not provide adequate rest days. (HRR09).

¶15. (U) Key labor rights organizations: there are few organizations working on labor issues, apart from the Ministry of Labor and Unions. The primary NGO in the field is the Program on the Economy of Work (PET) at the Academy of Christian Humanism University. The ILO's regional office for Chile, Paraguay, and Uruguay is based in Santiago.

¶16. (U) Point of Contact for FTA Labor Matters in Chile: Jeff Peet, Desk Officer for U.S. Trade Policy, Directorate General of International Economic Relations (DIRECON), Ministry of Foreign Affairs of Chile, jpeet@direcon.cl, (56 2) 827-5522. This contact may change in March, when the Pinera administration assumes office.

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STRATEGY RECOMMENDATIONS

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¶17. (SBU) Chile's Ministry of Labor, employers, and unions are generally capable, credible organizations with well-developed understandings of labor rights, economics, and public policy tradeoffs. Such organizations are eager for expert-level technical information exchanges and sharing of best practices.

¶18. (SBU) Post does not have this expert-level knowledge or experience in-house and, without funding to support such activities, has been severely constrained in our ability to bring U.S. and Chilean practitioners together to share expertise. We have attempted to find no-cost/low-cost opportunities and to find other funding sources, and have been able to facilitate a handful of small-scale activities this way. Post and DOL worked together with the Chileans to submit a proposal for OAS Inter-American Network for Labor Administration (RIAL, by its Spanish acronym) funding, which was accepted and led to a 2009 visit by Labor Directorate staff to DOL call centers. In addition, post and DOL have begun coordinating a series of low-cost digital video conferences (DVCs) for Chilean labor inspectors held at Post. DOL's Wages and Hours Division presented in July 2009, DOL's Occupational Safety and Health Administration presented in December 2009, and we hope to hold additional DVCs in 2010. IDB funding allowed a Bureau of Labor Statistics expert to attend a Ministry of Finance conference in early 2009.

¶19. (SBU) Notwithstanding these examples of successful cooperation, informational exchanges so far have been short, isolated events. A modest but consistent and dedicated funding stream would allow post and DOL to facilitate exchanges and relationships between US and Chilean labor officials, employers,

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and union leaders, helping to further improve Chile's reasonably successful current labor practices.

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#### COOPERATION NEEDS AND AREAS FOR DIALOGUE

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¶20. (SBU) Chile has few ongoing labor cooperation relationships with other countries. Ministry of Labor International Relations Advisor Jose Maria Hurtado told Pol Specialist on January 7 that Chile's only ongoing cooperation relationships are with Argentina and the U.S. Chile currently has several proposals pending for OAS RIAL funding, including with Peru and Bolivia.

¶21. (SBU) Post recommends the following labor cooperation assistance areas:

#### Tier 1

-- Technical assistance to strengthen labor law enforcement, in the form of travel funding for Chilean labor inspectors to travel to U.S. and apprentice with U.S. Department of Labor inspectors and to bring UDOL speakers/experts to Chile;

-- Technical assistance to Chile on the formation and implementation of summer youth work programs;

-- Technical assistance on work subsidy programs for women and youth;

## Tier 2

--Travel funding for Chilean labor leaders and employers to travel to meet with peers in the U.S. and exchange best practices or participate in conferences or trainings. Such travel could perhaps be facilitated by the AFL-CIO's Solidarity Center and the Center for International Private Enterprise. One industry focus for such exchanges could be agriculture as the U.S. and Chile share a complementary trading relationship in this area and Chile and California have an ongoing cooperation agreement in place.

¶22. The U.S. and Chile recently signed a Memorandum of Understanding to coordinate development assistance activities in third countries within the Western Hemisphere, a concept termed "trilateral development cooperation." The first projects will likely begin in El Salvador and Paraguay. Given Chile's relatively high labor standards, labor could be a fruitful area for future trilateral development cooperation, particularly in the areas of labor law enforcement and pensions.

URBAN